

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MEMORY CONTROL ENTERPRISE, LLC,

No. C-09-1063 MMC

Plaintiffs,

**ORDER AFFORDING PLAINTIFF
OPPORTUNITY TO FILE
SUPPLEMENTAL MEMORANDUM;
CONTINUING HEARING**

v.

SYMANTEC CORPORATION,

Defendant.

Before the Court is plaintiff Memory Control Enterprise, LLC's motion, filed April 30, 2009, for leave to file a First Amended Complaint ("FAC") that adds three new defendants to the above-titled action and alleges each defendant infringed United States Patent Number 6,952,719 ("719 patent") by, inter alia, "making, using, importing, selling or offering to sell" such defendant's products. (See Mot. Ex. 1 (Proposed FAC) ¶¶ 11-18.) No opposition to the motion has been filed.


Having read and considered the papers filed in support of the motion, the Court is not persuaded, on the record before it at this time, that joinder of the three additional parties at issue would be proper. In particular, plaintiff has failed to show its proposed claims against such parties arise out of the same "transaction, occurrence, or series of transactions or occurrences" as plaintiff's claims against defendant Symantec Corporation ("Symantec"), see Fed. R. Civ. P. 20(a)(2) (providing persons may be joined as defendants

1 if “any right to relief is asserted against them . . . with respect to or arising out of the same
2 transaction, occurrence, or series of transactions or occurrences”), as the question of
3 whether each party’s products infringe the ‘719 patent would appear to depend on a distinct
4 “factual background,” see Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997) (noting
5 “the ‘same transaction’ requirement[] refers to similarity in the factual background of a
6 claim”).¹ The Court will, however, afford plaintiff an opportunity to supplement its showing
7 on this issue.

8 Accordingly, plaintiff may file, no later than June 5, 2009, a supplemental
9 memorandum in support of its motion, not to exceed 5 pages in length, independent of
10 exhibits and/or declarations. In light of the above, the hearing scheduled for June 5, 2009
11 is hereby CONTINUED to June 26, 2009.

12 **IT IS SO ORDERED.**

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14 Dated: May 29, 2009

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16 MAXINE M. CHESNEY
17 United States District Judge
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27 ¹Although plaintiff asserts that, if the proposed amendment is allowed, there is likely
28 to be “common evidence . . . regarding invalidity” (see Mot. at 4:12-13), plaintiff makes no
argument concerning the factual relationship, if any, between its claims of infringement
against Symantec and those against any of the three proposed defendants.